



Appeal Decisions

inquiry held on 19 October 1999

by Paul Taylor Bsc Dip TP MRTPI

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

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3 NOV 1999

Appeal 1: T/APP/L2820/C/98/1010280

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is brought by Mr A Brodie against Kettering Borough Council.
- The site is located at Stoke Farm, Ashley Road, Stoke Albany
- The Council's reference is EN/97/0247
- The notice was issued on 15 June 1998
- The breach of planning control as alleged in the notice is, without planning permission, the making of a material change of use to mixed residential, agricultural, and industrial use.
- The requirements of the notice are:
 - (a) cease using the land for the storage of building materials and associated business uses
 - (b) cease using the land for the storage of furniture and associated business uses
 - (c) remove building materials and furniture from the land
 - (d) cease all deliveries and dispatches from the land
- The period for compliance with the requirements is 2 months
- The appeal was made on the grounds set out in section 174(2)(a)(d)(f) and (g) of the 1990 Act as amended but grounds (d), (f) and (g) were withdrawn.

Decision Summary: The appeal is dismissed.

Appeal 2: T/APP/L2820/A/99/1023843

Appeal 3: T/APP/L2820/A/99/1029565

- These appeals are made under Section 78 of the Town and Country Planning Act 1990 against refusals of planning permission.
- The appeals are brought by NJ and AS Brodie against Kettering Borough Council
- The site is located at Stoke Farm, Ashley Road, Stoke Albany
- The application KE/99/0147 (appeal 2), dated 13 April 1999, was refused on 1 June 1999. The development proposed was "use of building as storage for agriculture, furnishings and building materials".
- The application KE/99/0379 (appeal 3), dated 4 June 1999, was refused on 24 August 1999. The development proposed was "use of building as storage for agriculture and furnishings"

Decision: These appeals are dismissed

Procedural matters

1. At the inquiry an application was made on behalf of the appellants for an award of costs against Kettering Borough Council. This is the subject of a separate decision.

Correction of the notice and withdrawal of grounds of appeal

2. The appellant and the Council submitted in writing agreed amendments to the notice to make the allegation correct, to modify the requirements of the notice and to change the period for compliance. The amendments are, in my view, sensible and appropriate and I shall correct the notice accordingly. The breach of planning control is essentially that of using part of an agricultural building for storing furniture. Consequently, the appeals on grounds (d), (f) and (g) were withdrawn.

The ground (a) appeal and the section 78 appeals

The proposals

3. All three appeals concern the proposed continued use of an agricultural building for the storage of furnishings ie, furniture and related items. No permission is now sought for storing building materials. The building concerned is a modern agricultural shed of about 1440m²; it was constructed in the mid-1980s for livestock and general agricultural purposes. Part of the building, nearly one-third, is currently in use for storing furnishing (the "storage" use – Use Class B8). Application KE/99/0147 sought permission for use of all of the appeal building for a combination of agricultural and storage use. Application KE/99/0379 sought permission for use of half of the building for a combination of agricultural and storage use.

4. The appellants recognise the Council's concern about the amount of traffic that could be generated by the storage use. They have, therefore, made a unilateral undertaking under S106 of the 1990 Act as amended. This provides that "vehicle movements to and from the land in connection with non-agricultural storage would be limited to 4 per day each way under application KE/99/0147 and to no more than 2 per day each way under application KE/99/0379 unless otherwise agreed in writing with the local planning authority (such agreement not to be unreasonably withheld or delayed)". The undertaking has other provisions relating to vehicle routeing, the keeping of a log of vehicle movements, parking, and to the making of a financial contribution towards the repair and improvement of the carriageway and verges of part of Ashley Road.

The main issue

5. Planning Policy Guidance 7, the Countryside, (Feb 1997) indicates, at 3.14, that it is Government policy that there should be no reason for preventing the conversion of rural buildings (including modern buildings) for business re-use provided that legitimate planning objections (for example on traffic grounds) can be overcome. Policy EM9 of the approved structure plan and RA14 of the adopted local plan reflect that approach. I consider, therefore, having regard to all the evidence before me, that the main issue in this appeal is whether any traffic objections that might arise for the local environment due to the continued use of the

appeal building for B8 storage use purposes could be overcome. A relevant local plan policy is RA11 which deals with B8 uses in the open countryside.

The appeal building and its surroundings

6. The appeal building is located at the northern end of Stoke Albany. It is served by a short drive that enters the village near the junction of Ashley Road with Lower Road. At this junction are the village hall, the Church, the war memorial and various grassed areas, which according to the Parish Council's chairman, functions as the village green. The area is, in my view, most attractive and peaceful. Traffic is light, as the highway authority's counts show. The adopted local plan designates the junction area as an environmentally important open space and it is within the Stoke Albany conservation area. The appeal building is not itself within the conservation area. Ashley Road leads south from the junction area. It is a pleasant, rural, village lane, narrow in places.

Trip Generation

7. The local highway authority's evidence is that a B8 storage use of the whole appeal building could, on the basis of the TRICS database, generate about 100 trips per day. This is a theoretical figure and, in my view, a maximum given that neither planning application proposes the use of the whole building for solely B8 storage use. If, for example rather less than half of the building were used for B8 storage (say 700m²) then the theoretical trip generation would be 49 trips per day (based on 7 trips per 100m²). These theoretical estimates suggest that the potential for the B8 storage use to generate traffic is considerably greater than that anticipated by the appellants in connection with their particular furnishings storage use. That potential is recognised by the appellants as is the harm that an unrestricted B8 use could cause to the environment of Stoke Albany Village, hence the S.106 undertaking.

8. It is difficult to be precise about what level of trip generation would be acceptable or unacceptable in this particular case. However, if it were restricted to no more than 4 trips per day each way then I think that that low level would not be so harmful as to be unacceptable. On the other hand, if it were unrestricted and rose towards the theoretical potential levels referred to above, then I consider that the results would be objectionable. There would be a noticeable level of vehicular activity, involving HGVs, and incidents of noise, disturbance, visual intrusion, and inconvenience would, in my view, be significant and harmful for pedestrians and horse-riders using the sensitive environmentally important area around the junction of Ashley Road and Lower Road.

9. A key consideration is, therefore, whether the provisions of the unilateral undertaking, related to trip generation, would be effective in restricting vehicular activity to acceptable levels. A long term view is necessary because the nature of the needs of the storage business could change over time. A different operator might want to manage the building in a different way to the current operator.

10. In my view it is important to have regard to what is reasonable. I consider however that there is something inherently unreasonable in granting planning permission for a sizeable building, or part-building, for B8 storage use and then trying to limit trip generation to as little as only 4 or 2 trips each way per day. The volume of storage space involved is not small. The building is relatively tall and it could be intensively used for storing a lot of varied goods. The

appellant's witness said that, in his view, trip generation at a higher level than that specified in the undertaking could be acceptable and reasonable.

11. My concern is that after a while the operator might well seek consent for higher levels of trip generation than those specified in the undertaking and that those higher levels could not reasonably be refused given the volume of storage space permitted and the difficulty of defining the precise level at which the number of trips generated becomes unacceptable. I am not, therefore, satisfied that the unilateral undertaking made would, in the long term, ensure that traffic objections would not arise. I conclude on the main issue that possible traffic objections associated with the local environment and the continued use of the appeal building for B8 storage uses cannot be overcome and the proposals do not therefore satisfy all the requirements of Government policy as set out in 3.14 of PPG 7.

12. I am also not satisfied that criterion (v) of policy RA11 of the adopted local plan would always be met. This requires new B8 development in the open countryside, which includes the appeal site, to not give rise to significant additional traffic to the detriment of the character and amenity of the locality. It is the character and amenity of the locality that is my concern in relation to traffic (rather than safety or congestion). None of the planning conditions discussed would in my view overcome this concern since they do not, and cannot, control trip generation.

Material considerations

13. The appellants argue that if planning permission is not granted then similar or greater traffic use could well be generated by the lawful agricultural use of the building. I have doubts about this. The building seems to no longer be fully needed to serve the farming unit concerned, some of which has now been converted to a golf course. The building was, at the time of my visit, little used for purposes to do with agriculture. The very fact that permission is sought for its B8 storage suggests that it has little use for agriculture. I therefore attach little weight to the argument.

14. The appellants also argue that the proposals would have benefits, namely, making good use of the building, helping agricultural diversification and supporting the appellants' employment and income. In my view, however, these are, in this case, primarily personal benefits for the appellants themselves. They contribute little or nothing to the rural environment or economy. The appellants argue that a benefit of the continued B8 use is that it would help preserve the character of the area. While it is true that the use would preserve the presence of the appeal building I do not see this as of any great benefit because it is a utilitarian building that adds nothing to the amenity of the area.

Conclusion

15. My overall conclusion is that planning permission should not be granted due to potential traffic objections and to conflict with Government and local planning policy. There are no material considerations that lead me to set these matters aside. All 3 appeals therefore fail.

Other matters

16. The Council argue that the continued use of the appeal building for B8 use would not satisfy any of the 3 alternative criteria of policy RA11 of the local plan. Criteria (ii) and (iii) are

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not relevant and, they say, the B8 use would not "benefit the rural environment" which criterion (i) requires it do. The requirement to "benefit the rural environment" is not, however, one found in more recent Government policy as set out in 3.14 of PPG7. I do not, therefore, rely on it as a basis for refusing planning permission. Nevertheless I have taken account of the benefits of the proposal when examining 'material considerations' above and I find them to be of no great weight.

17. I have also had regard to the fact that the 2 planning applications were recommended for approval by planning officers of the Council who agreed the text of the S106 undertaking. I consider, however, that Council members had sound planning reasons for taking the decisions that they did.

Formal Decisions

Appeal 1

18. For the above reasons and in exercise of the powers transferred to me I hereby correct the notice by deleting all the words in its paragraphs 3 and 5 and replacing them as follows: -

3. THE BREACH OF PLANNING CONTROL ALLEGED
Without the benefit of planning permission the making of a material change of use to mixed agriculture, residential and storage use
4. WHAT YOU ARE REQUIRED TO DO
 - (a) cease using the land for storage except storage ancillary to the agricultural and residential use of the land
 - (b) remove building materials and furniture from the land
 - (c) cease all deliveries and dispatches to and from the land other than those associated with the agricultural and residential use of the land

Period for compliance: 6 months

Subject thereto I hereby dismiss this appeal, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals 2 and 3

19. For the above reasons and in exercise of the powers transferred to me I hereby dismiss these appeals.

Right of Appeal

20. Particulars of the right of appeal to the High Court against these decisions are enclosed for those concerned.

Paul Taylor

PAUL TAYLOR

/APP/L2820/C/98/1010280
T/APP/L2820/A/99/1023843
T/APP/L2820/A/99/102956

APPEARANCES

FOR THE APPELLANTS

Mr S. Stannion

Solicitor, Marrons Solicitors, 1 Meridien South,
Meridien Business Park, Leicester, LE3 2UY

He called: -

1. Mr I Althorpe BA MRTPI

Samuel Rose Limited

FOR THE COUNCIL

Mr B. Smith

Solicitor, Browne Jacobson Solicitors, 44
Castle Gate, Nottingham, NG1 7BJ

He called: -

1. Ms C. Harvey MSc MRTPI

Kettering BC

2. Mr R. Stacey Beng CEng MICE MIHT

Northamptonshire CC

FOR STOKE ALBANY PARISH COUNCIL

1. Ms S. Mellalieu

Chairman (c/o Mrs C. Wells, Cross Hill, Ashley
Road, Stoke Albany, LE16 8PL)

DOCUMENTS

1. List of persons attending the inquiry
2. Letter giving notification of the inquiry
3. Letters from interested persons
4. Appendices to Mr Althorpe's evidence
5. Appendices to Ms Harvey's evidence
6. Appendices to Mr Stacey's evidence
7. S106 undertaking
8. Agreed corrections to notice
9. Letter from agent's highways consultant
10. Documents handed in by the Council

PLANS

- A. The Enforcement Notice Plan
- B. Application KE/99/0147
- C. Application KE/99/0379 plan